

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 737 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEIR OF CHHOTABHAI H PARMAR, RAMBHAI CHHOTABHAI PARMAR

Versus

MAHENDRABHAI G PATEL

Appearance:

MR BJ JADEJA for the Petitioner

MR BHAVIN G PATEL for the Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/08/96

ORAL JUDGEMENT

1. The petitioner filed this Special Civil Application before this Court challenging thereunder the order of the Gujarat Revenue Tribunal in Revision Application No.TEN.B.A.429 of 1979 decided on 27th September, 1979 and the order of the Tribunal in Review Application No.TEN.C.A. 52/79 dated 20th June, 1980 in the matter of the application filed by him under the provisions of sec. 32(1)B of the Bombay Tenancy and

Agricultural Lands Act, 1948 (hereinafter referred to as the Act, 1948).

2. The land in dispute comprises in the survey no.865/1 A admeasuring 1 acre and 21 gunthas. The original landlord of this land was one Lakhabhai Ranchhodbhai who gifted this land to the respondent by gift deed dated 9-7-1956. The petitioner was the tenant of this land. The petitioner has come up with a case that the respondent herein evicted him from the land in question otherwise then under the provisions of the Act, 1948. The petitioner filed an application for the restoration of the possession of the land under sec. 32(1)B of the Act, 1948 before the Mamlatdar, Nadiad which was registered as tenancy case no.32(1B) Davda/5/76. This application was dismissed by Mamlatdar under its order dated 20th June, 1977. The petitioner filed an appeal being tenancy appeal no.324/77 against the aforesaid order before Dy. Collector, Nadiad. The appeal was dismissed by the appellate authority. The petitioner then filed the revision application no.TEN.BA.429/79 before the Gujarat Revenue Tribunal against the order of the appellate authority and the same has been dismissed under the order dated 27th September, 1979. The review application has also been filed, but that has been dismissed on 20th June, 1980. Hence, this petition.

3. The learned counsel for the petitioner contended that all the three authorities have committed serious illegality in not restoring the possession of the land in question to the petitioner. He was entitled for the restoration of possession of the land under sec. 32(1)B of the Act, 1948 as admittedly he was in possession on 15-6-1955 and he was not dispossessed by the landlord at any time before the specified date. The respondent has dispossessed the petitioner after the gift deed has been made of the land in his favour by the landlord which is of no consequences.

4. On the other hand, the learned counsel for the respondent Shri Bhavin Patel contended that the land in dispute has been gifted to the respondent by the landlord under the gift deed in 9-7-1956. The petitioner was not in possession after 20th September, 1956. On the specified date, i.e. on 3-3-1973, the landlord or successor in interest was not in possession of the land. In view of this fact, all the three authorities have not committed any illegality in making the orders against the petitioner. Lastly, the learned counsel for the respondent contended that all the three authorities

recorded a finding of fact against the petitioner, and as such, this Court should not interfere with the same sitting under Article 227 of Constitution of India.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The learned counsel for the petitioner Shri Jadeja admits that the petitioner was dispossessed from the land on or before 20th September, 1956. The document annexure 'F' is on the record produced by the petitioner himself where from it is clear that the respondent Mahendrabhai Gordhanbhai has come in possession of the land on 20th September, 1956. In view of this admission it is clear that on the specified date the landlord was not in possession, Mahendrabhai Gordhanbhai Patel was in possession. The question is whether Mahendrabhai Gordhanbhai Patel is successor in interest of the original landlord. The reference in this respect may have to the explanation which is there to sec. 32(1)B of the Act, 1948 which reads as under:

Explanation: In this sub-section "successor in interest" means a person who acquires the interest by testamentary disposition or devolution on death.

The respondent has admittedly got right, title and interest in the land in question under the registered gift deed dated 9-7-1956. It is not the case of the petitioner and it could not have been in the presence of the fact that right, title and interest have been acquired by the respondent vide registered gift deed that the petitioner acquired interest by testamentary disposition or devolution on death. In view of this fact, the petitioner's application under sec. 32(1)B of the Act, 1948 has rightly been rejected by the first authority and that judgment has correctly been affirmed by the appellate authority and the revisional authority. In the case of Laxmikant Revachand Bhojwani v. Pratapsingh Mohansingh Pardeshi reported in 1995(6) SCC 576, the Supreme Court held that the High court under Article 227 cannot assume unlimited prerogative to correct the all sort of species of hardship or wrong decision. It must be restricted to case of grave dereliction of duty and fragrant abuse of fundamental principles of law, and where grave injustice would be done unless the High Court interfere. In the present case, admittedly the petitioner has been dispossessed on 27th September, 1956, and on the specified date neither the landlord nor his successor in interest was in possession. The transfer of the land has been made in favour of the respondent by registered gift deed. In

view of this fact, it cannot be said that any grave injustice would be done to the petitioner unless the High Court interferes in the matter.

6. In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged with no order as to costs.

zgs/-